

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

WHATSA BAGEL OF CLEVELAND PARK
Respondent

Case Nos.: I-00-70244
I-00-70128

FINAL ORDER

I. Introduction

On March 3, 2001, the Government served a Notice of Infraction (No. 00-70244) upon Respondent Whatsa Bagel of Cleveland Park, alleging a violation of 23 DCMR 3012.1, which requires operators of restaurants to “take all necessary precautions to keep the premises free from rats and vermin.” The Notice of Infraction alleged that the violation occurred on February 15, 2001 at 3513 Connecticut Avenue N.W. and sought a fine of \$1,000.00.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code § 6-2715). Accordingly, on April 2, 2001, this administrative court issued an order finding Respondent in default, assessing the statutory penalty of \$1,000.00 authorized by D.C. Code § 6-2704(a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction on April 12, 2001. On April 23, 2001, Respondent filed a plea of Admit with Explanation. On May 3, 2001, I issued an order permitting the Government to respond to that plea. The Government filed its response on May 14, 2001.

II. Summary of the Evidence

Respondent states that a pet store moved into its shopping center two years ago, directly below its location. It attributes the rodent problem in its facility to the pet store, which it claims “is not under the same regulations as we are.”¹ Respondent states that it has complained to the landlord about the problem, but with no results. Respondent attributes its failure to file a timely response to the first Notice of Infraction to the administrative difficulties presented when its facility was shut down.² Respondent states that it needed to change its sanitation procedures, re-train employees, and hire new employees due to some workers’ non-compliance with the necessary procedures. Respondent’s manager states that he needed to work 18-hour shifts, seven days a week during that period and that he now recognizes that he should have followed the instructions on the Notice of Infraction form.

The Government responds that it does not object to a reduction of the statutory penalty, which I interpret as a reference to the penalty for failure to file a timely response to the Notice of

¹ Apparently, Respondent is referring to the rodent control regulations that apply only to restaurants or other food establishments. *E.g.*, 23 DCMR 2606 and 23 DCMR 3012, the regulation at issue in this case.

² Respondent does not say so explicitly, but apparently its violation of §3012.1 was one of the reasons, if not the only reason, why it was shut down.

Infraction. The Government also states that it acknowledges Respondent's good faith effort to correct the rodent infestation problem.

III. Findings of Fact

1. By its plea of Admit with Explanation, Respondent has admitted violating 23 DCMR 3012.1 on February 15, 2001.
2. Respondent has acknowledged responsibility for its violation and has acknowledged its error in failing to file a timely answer.
3. There is no evidence that Respondent has a history of prior violations.
4. As conceded by the Government, Respondent has undertaken good faith efforts to correct the violation.
5. Respondent's efforts to re-open its business and train new workers distracted it from its responsibility to answer the Notice of Infraction in a timely fashion.

IV. Conclusions of Law

1. Respondent violated 23 DCMR 3012.1 on February 15, 2001.
2. A fine of \$1,000.00 is authorized for violations of 23 DCMR 3012.1. 16 DCMR 3216.1(i) as added by § 910(b) of the Rodent Control Act of 2000, Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8692 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000).

3. Respondent's acceptance of responsibility, its lack of a prior history of violations and its efforts to correct the violation justify a reduction in the fine amount. The fine will be reduced to \$500.00.
4. The Civil Infractions Act, D.C. Code §§ 6-2712(f) and 6-2715, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party can not make such a showing, it is subject to a penalty equal to the amount of the proposed fine. D.C. Code §§ 6-2704(a)(2)(A), 6-2712(f).
5. Respondent has not carried its burden of showing good cause sufficient to suspend the penalty for failing to answer. Administrative difficulties ordinarily do not excuse failures to meet statutory deadlines. The Government, however, has consented to a reduction of the statutory penalty, although it has not stated its reasons and has not expressed its view of the appropriate amount of any reduction. In these circumstances, I will treat the Government's consent to a reduction as a factor to be considered in determining the appropriate penalty and as an admission of the accuracy of the factual statements asserted by Respondent in support of its request for a reduction. Respondent's unchallenged claim that its extensive efforts to achieve compliance led to its untimely answer, combined with the Government's consent to a reduction of the penalty, warrant a reduction, but not a suspension, of the statutory penalty. D.C. Code § 6-2703(b)(6).³ The penalty, therefore, will be reduced to \$250.00.

³ Although the Government has not stated the reasons for its consent to a reduction of the penalty, there is no evidence that it is acting in an arbitrary or capricious manner. In future cases, the better practice would be for the Government briefly to state its reasons when consenting to a request for reduction of the penalty in order to provide additional clarity and assurance that its recommendation is properly grounded.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____
day of _____, 2001:

ORDERED, that Respondent shall pay a total of **SEVEN HUNDRED FIFTY DOLLARS (\$750.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Code §

Of course, the Government remains free to enter into settlements with future Respondents, either of its claim for a statutory penalty or of the entire case.

6-2713(i), and the sealing of Respondent's business premises or work sites pursuant to D.C. Code
§ 6-2703(b)(6).

/s/ **6/28/01**

John P. Dean
Administrative Judge